IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7454 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyu of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constituition of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judgte ?

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SANJAYSING ALIAS BOKHO ALIAS CHAUVIS NUMBER S/O JAGANNATH- - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1,2.

MR PD BHATE, AGP for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 15/06/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated 7.2.2005 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred upon him under sub-

section (1) of Section 3 of the Gujarat Prevention Anti-social Activities Act, 1985 (“the Act” for short), as, the Detaining Authority found that the detenu is a “dangerous person” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2.Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to two criminal cases which are filed under the provisions of Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.

3.At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the right of the petitioner to make proper and effective representation against the detention order is deprived and that the detaining authority has not applied its mind to the question whether or not the supply of the relevant particulars of the materials would be injurious to the public interest and, therefore, the detaining authority has mechanically endorsed or accepted the recommendation of the subordinate authority. It is submitted that the detaining authority has mechanically exercised the powers conferred upon him under Section 9(2) of the Act. It is submitted that non-supply of the names and addresses of the witnesses has adversely affected the rights of the petitioner to make an effective representation guranteed under Article 22(5) of the Constituition. It is submitted that when the detention order is passed, the petitioner was in judicial custody. It is submitted that the detaining authority has not verified the genuineness and correctness of the fear expressed by the witnesses in the respective statements and there is no contemporeous material before the detaining authority to reach at the subjective satisfaction that the activities of the petitioner adversly affected or is likely to affect the maintenance of public order.Learned advocate for the petitioner has relied upon the decision in the case of Rajendra Gulabchand Sangani V/s Commissioner of Police reported in (2003)2 G.H.J.(561) wherein in para 5 the Court has observed as under :

4.The detaining authority has filed the affidavit-in-reply and has tried to support the impugned order.

5.Considering the facts and circumstances of the case and considering the judgment referred to above, in my view, it can be presumed that the order is passed in a mechanical manner as this Court has considered more or less the same type of situation in the judgment referred to above. In that view of the matter and in view of the aforesaid judgment, the order of detention is required to be quashed

and set aside.

6.In view of what is stated above, the petition is allowed. The order of detention dated 07.02.2005 is quashed and set aside. The detenu Sanjaysing @ Bhopo @ Chauvis number s/o Jagannathsing Rajput is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(SHARAD D DAVE, J)

srilatha